



2024:DHC:3367



\$~43

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 5870/2024 and CM APP No. 24257-58/2024**
AYESHA SANKHLA (THROUGH GUARDIAN
KAPIL KUMAR SANKHALA) Petitioner
Through: Mr. Rishabh Kapur and Mr.
Tanmay Gupta, Advocates

versus

GOVERNMENT OF NCT OF DELHI
& ANR. Respondents
Through: Ms. Prashansa Sharma and Mr.
Utkarsh Singh for Mr. Santosh Kumar
Tripathi, Standing Counsel for DoE
Counsel for R2 (appearance not given)

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

J U D G M E N T (O R A L)

% **26.04.2024**

1. The petitioner is a student belonging to the Scheduled Castes. Under the regime of the Right of Children to Free and Compulsory Education Act, 2009 (“the RTE Act”), she, therefore, belongs to the Disadvantaged Group (DG), who is entitled to admission to entry level classes under Section 12¹ of the said Act on preferential basis.

¹ 12. **Extent of school's responsibility for free and compulsory education. –**

- (1) For the purposes of this Act, a school,—
(a) specified in sub-clause (i) of clause (n) of Section 2 shall provide free and compulsory elementary education to all children admitted therein;
(b) specified in sub-clause (ii) of clause (n) of Section 2 shall provide free and compulsory elementary education to such proportion of children admitted therein as its annual recurring aid or grants so received bears to its annual recurring expenses, subject to a minimum of twenty-five per cent;



2024:DHC:3367



2. The petitioner applied to the Directorate of Education (DoE) for admission to the Nursery/Pre-School grade in the academic year 2022-2023. A computerized draw of lots was conducted by the DoE. As a result, the petitioner was shortlisted for admission to the respondent-school in the Nursery/Pre-School grade in the academic year 2022-2023.

3. As per the allegations in the petition, the respondent-school refused to admit the petitioner despite the outcome of the computerized draw of lots conducted by the DoE. Apparently in order not to lose precious academic years, the petitioner's father admitted her in another school. Mr. Rishabh Kapur, learned counsel for the petitioner, submits that this was done only under compulsion and that continuing the petitioner's education in the said other school would be beyond his financial means.

4. The prayer in this petition is for a direction to the respondent-school to admit the petitioner in Class II for the academic year 2024-2025.

5. A similar controversy stands adjudicated by this Bench in its judgment in *Jiya v. Maharaja Agrasen Model School*². I have taken the view that right that enures in favour of a child belonging to a EWS

(c) specified in sub-clauses (iii) and (iv) of clause (n) of Section 2 shall admit in Class I, to the extent of at least twenty-five per cent of the strength of that class, children belonging to weaker section and disadvantaged group in the neighbourhood and provide free and compulsory elementary education till its completion:

Provided further that where a school specified in clause (n) of Section 2 imparts pre-school education, the provisions of clauses (a) to (c) shall apply for admission to such pre-school education.

² 2024 SCC OnLine Del 2126

Signature Not Verified

Digitally Signed By: AHT
KUMAR
Signing Date: 29.04.2024
18:51:59

WP(C) 5870/2024

Signature Not Verified

Digitally Signed
By: CHANDRASHEKHARAN
HARI SHANKAR
Signing Date: 29.04.2024
18:50:44

Page 2 of 6



2024:DHC:3367



or DG category, under the RTE Act, for admission to a particular school, would enure only if the child applies to the DoE for admission as an EWS or DG candidate to an entry level class in that academic year and, consequent on a computerized draw of lots conducted by the DoE, is shortlisted for admission to that school. The result of the computerized draw of lots is academic year, school and class specific. While applying for admission, the child has to specify the class/grade in which the child seeks admission and the academic year for which admission is sought. The case of the child is considered randomly, by the computer, along with the cases of other children who have, for that academic year, sought admission as EWS/DG candidates for the same class. The computerized draw of lots is conducted for EWS/DG students, who are seeking admission in that academic year to the specified entry level class, as per the application submitted by the student.

6. Thus, even if the outcome of the computerized draw of lots is in favour of a particular student, the benefit of that outcome can enure in favour of the student only till the end of that academic year. Once the year comes to an end, the benefit stands extinguished.

7. If the child approaches the Court during the year for which the allotment has been made by the DoE and the Court either directs provisional admission or reserves a seat in favour of the child for that year in that school, then, even if the petition is taken up after the year is over, the Court is in a position to grant relief.



2024:DHC:3367



8. However, if the child approaches the Court after the academic year is come to an end, the right of the child no longer survives and, for any subsequent academic year, the child would have to compete with other students in accordance with the protocol devised in that regard by the DoE by submitting an application for admission as an EWS/DG student.

9. To my mind, this legal position is painfully obvious. In the present case, for example, the petitioner has, in his favour, the outcome of the computerized draw of lots conducted by the DoE, which shortlisted him for admission in the respondent-school *in Nursery/Pre-School in 2022-2023*. The slip containing the result of the draw of lots, as communicated by the DoE to the petitioner, reads thus:

School Allotted for admission process for Session 2022-23 Education Department, Old Secretariat, Delhi-110054	
Registration No.	20220178470
Student Name	AYESHA
Father's Name	
Mother's Name	MAMTA
Guardian's Name	
Date of Birth	02/12/2017
Allotted School ID	1617190
Allotted School Name	VISHAL BHARTI PUBLIC SCHOOL, PASCHIM VIHAR, DELHI
Class	Nursery/Pre-school

Thus, the petitioner has been shortlisted for admission *to Nursery/Pre-School* in the respondent-school *for 2022-2023*, *not for admission to Class I in 2024-2025*, which is what the petitioner prays for.

Signature Not Verified

Digitally Signed By: AHT
KUMAR WP(C) 5870/2024
Signing Date: 29.04.2024
18:51:59

Signature Not Verified

Digitally Signed
By: CHANDRASHEKHARAN
HARI SHANKAR
Signing Date: 29.04.2024
18:50:44



2024:DHC:3367



10. If the petitioner bases his right on the outcome of the computerized draw of lots conducted by the DoE, he has to do so *as per the express terms of the outcome of the draw of lots. He cannot, therefore, base a claim to admission to Class I in 2024-2025 in the respondent-school on the basis of a computerized draw of lots conducted by the DoE which has shortlisted him for admission to Nursery/Pre-School in 2022-2023 in the respondent-school.*

11. Though Mr. Kapur, learned counsel for the petitioner fervently prayed that this court may, in the facts of this case, direct the respondent-school to grant admission to the petitioner in Class II or, in the alternate direct the DoE to accommodate the Petitioner in another alternate private school, it is not possible for this Court to accede to the request.

12. Section 12 of the RTE Act enures, in favour of DG category students, only in entry level classes, and not beyond. As a private unaided school, the respondent-school falls within Section 2(n)(iv)³ of the RTE Act. Section 12(1)(c) obligates the respondent-school, therefore, to “admit in Class I, to the extent of at least twenty five percent of the strength of that class, children belonging to weaker section and disadvantaged group in the neighbourhood and provide free and compulsory *elementary education till its completion*”. Where, however, a school provides pre-school education, the obligation under Section 12(1)(c) applies for admission to such pre-

³ (n) “school” means any recognised school imparting elementary education and includes—
(iv) an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority;



2024:DHC:3367



school education. The respondent-school provides pre-school education. Its obligation, under Section 12 is, therefore, only to admit DG/EWS students to the extent of 25% of the strength of its Pre-School class. Section 12(1) does not obligate the respondent-school to admit EWS or DG category students in any class beyond Nursery/Pre-School.

13. Schools which have obtained land at concessional rates from public authorities are, under the land clause contained in the applicable lease deeds, required to admit EWS students to the extent of 20% of the strength of each class, beyond the entry level class, till completion of education. This obligation does not, however, extend to DG category students.

14. Accordingly, the Court regrets that it is unable to grant any relief to the petitioner in the facts of this case.

15. The petition is dismissed in limine.

C.HARI SHANKAR, J

APRIL 26, 2024/yg

Click here to check corrigendum, if any